

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CURTIS LEE SHEPPARD,

Plaintiff,

v.

UNKNOWN KEMPT, *et al.*,

Defendants.

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Case Nos. 6:19-CV-567-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Curtis Lee Sheppard, proceeding pro se, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. This case was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. On November 26, 2019, Judge Love issued a Report and Recommendation (Docket No. 5), recommending that Mr. Sheppard's complaint be dismissed with prejudice for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g). Mr. Sheppard has filed objections. Docket No. 8.


In his Report, the Magistrate Judge found that Plaintiff's complaints regarding the confiscation of his property, First Amendment retaliation, and denial of access to courts were barred under 28 U.S.C. § 1915(g). Pursuant to § 1915(g), an inmate may not file any lawsuits or appeals *in forma pauperis* if he has three or more lawsuits or appeals previously dismissed as "frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." The Magistrate Judge found, after a review of various court records, Mr. Sheppard has had at least six cases dismissed against him pursuant to the "three strikes" provisions of § 1915(g). *See* Docket No. 5 at 2. The Magistrate Judge therefore found the complaint must meet the "imminent danger" requirement under § 1915(g).

See id. The Magistrate Judge concluded that since the threat must be “real and proximate” to meet the requirements of § 1915(g), the lawsuit was barred because Mr. Sheppard had not alleged that he was in imminent danger of serious physical injury. *See Barker v. Oliver*, 2012 WL 4977777, at *3 (E.D. Tex. Sept. 18, 2012) (citations omitted).

A copy of this Report was sent to Plaintiff’s address, and Plaintiff has filed timely objections. Docket No. 8. The court has conducted a careful de novo review of record and the Magistrate Judge’s proposed findings and recommendations. *See* 28 U.S.C. § 636(b)(1) (The district judge shall “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). Having reviewed the Magistrate Judge’s Report and Recommendations and the relevant objections, the Court has determined that the Report of the United States Magistrate Judge is correct and Plaintiff’s objections are without merit. Plaintiff’s objections fail to correct the deficiencies in the original complaint because they do not address why the complaint satisfies the “imminent danger” requirement under § 1915(g). *See* Docket No. 8. Accordingly, it is

ORDERED that the Magistrate Judge’s Report (Docket No. 5) be **ADOPTED** as the opinion of the Court and that Plaintiff’s objections (Docket No. 8) be **OVERRULED**. It is hereby **ORDERED** that the complaint be **DISMISSED WITH PREJUDICE** for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g). Mr. Sheppard may resume his lawsuit if he pays the entire filing fee of \$400 within thirty days after the entry of the final judgment. All pending motions are **DENIED** as **MOOT**.

So ordered and signed on this
Dec 13, 2019


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE